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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on July 25, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-2002-11962-4

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: Qantas Airways Limited

Date Filed: March 26, 2002

Relief requested: Exemption from 49 U.S.C. 41301 to conduct foreign air transportation of persons, property and mail between points in Australia, other authorized points, and Denver, CO, via authorized U.S. coterminal or "gateway" points that Qantas is authorized to serve pursuant to its foreign air carrier permit issued by Order 94-3-27.¹

If renewal, date and citation of last action: New authority

Applicant representative: Moffett Roller 202-331-3300

Responsive pleadings: United Air Lines, Inc., filed an answer in opposition, stating that the requested authority is extrabilateral, and that approval of Qantas' application to serve additional U.S. points on an extrabilateral basis would lessen U.S. negotiating leverage to achieve an open-skies agreement with Australia.

DISPOSITION

Action: Approved

Action date: July 25, 2002

Effective dates of authority granted: July 25, 2002 - July 25, 2003

Basis for approval: We carefully considered United's comments, but nevertheless found that grant of this limited extrabilateral authority is in the public interest. It remains the goal of the United States to obtain a full open-skies agreement with Australia. In our judgment, however, we do not perceive that, in the context of our overall aviation relationship with Australia, withholding this limited extrabilateral authority will further our achievement of that goal.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions (attached) ☒ Foreign air carrier permit conditions (Order 94-3-27)
☒ Statement of Authorization for American and Qantas code-share operations dated July 25, 2002, and conditions therein.

Action taken by: Read C. Van de Water
Assistant Secretary for Aviation
and International Affairs

We found that the applicant was qualified to perform its proposed operations.

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http://dms.dot.gov/reports/reports_aviation.asp

¹ Qantas states that it plans to serve Denver pursuant to a code-share arrangement on American Airlines, Inc., flights between Los Angeles and Denver that connect with Qantas flights in Los Angeles.

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage,

include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

